



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 29, 1996

Mr. Patrick S. Dohoney
Assistant District Attorney
Office of the Criminal District Attorney
Justice Center
401 W. Belknap
Fort Worth, Texas 76196-0201

OR96-0820

Dear Mr. Dohoney:

You seek reconsideration of Open Records Letter No. 96-0569 (1996), in which this office determined that the Texas Open Records Act, Government Code chapter 552, required the Tarrant County Sheriff's Department (the "department") to make certain information available to the public. You have submitted the requested material to this office for our review. We have assigned your request for reconsideration ID# 40309.

The department received a request for information seeking:

- (a) The number of inmates transported to any facility outside the Tarrant County jail within the past twelve (12) months, including the date and purpose of the transport.

You seek to withhold the requested information from required public disclosure pursuant to section 552.301 of the Government Code. In your original request for a decision from this office, you claimed that sections 552.101 and 552.108 of the Government Code excepted the information from required public disclosure. In Open Records Letter No. 96-0569 (1996), this office ruled that neither section 552.101 nor section 552.108 authorized the department to withhold the information from the requestor. In your request for reconsideration, you now assert that section 552.103 excepts the requested information from disclosure.

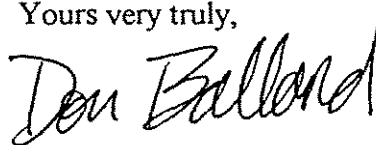
The Open Records Act places on the custodian of public records the burden of establishing that records are excepted from public disclosure. Attorney General Opinion H-436 (1974). Governmental bodies seeking an open records decision pursuant to section 552.301 are required to submit the stated exceptions that apply within ten days after the governmental body's receipt of the request for information. Gov't Code § 552.301(a). In

your initial request for a decision to this office, you did not raise section 552.103 as a stated exception. Consequently, you failed to raise this exception to disclosure within the statutory time frame. When a governmental body does not make a request for a decision as provided by section 552.301, the requested information is presumed to be public. *See* Gov't Code § 552.302. This presumption of openness can only be overcome by a compelling demonstration that the information should not be made public. Open Records Decision No. 515 (1988) (governmental body must show compelling reasons why attorney general's office should consider additional arguments after statutory 10 days have elapsed); *see also* Open Records Decision No. 150 (1977) (presumption of openness overcome by showing that information is made confidential by another source of law or affects third party interests).

In this instance, you have not made the requisite compelling demonstration. This office has previously held that section 552.103 does not provide a compelling reason to overcome a presumption of openness. *See* Open Records Decision No. 473 (1987); Gov't Code § 552.103; *see also* Open Records Decision No. 638 (1996) at 3 (governmental body has duty to inform this office when there are new and significant developments concerning the anticipated litigation). In the absence of a demonstration that the information is confidential by law or that other compelling reasons exist as to why the information should not be made public, you must release the information. Open Records Decision No. 195 (1978); *see* Gov't Code § 552.352 (distribution of confidential information is a criminal offense). We decline to reconsider Open Records Letter No. 96-0569 (1996).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Don Ballard
Assistant Attorney General
Open Records Division

JDB/ch

Ref.: ID# 40309

Enclosures: Submitted documents

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(w/o enclosures)